

## **REMARKS**

This amendment and related remarks that follow are intended to place the subject application in condition for allowance. Amendments to the claims are presented starting on page 2. Specifically, claims 1, 25 and 27 are amended to eliminate the term “and/or” which the Examiner asserted as being contradictory. In addition, claim 27 is amended to better claim the applicant's invention. No new matter is introduced as a result of these claim amendments. In view of these amendments and the following reasoning for allowance, the applicant hereby respectfully requests further examination of the subject application and allowance of claims 1-16, 18-27, 35 and 36.

### **1. Rejection of Claims 1 and 25 Under 35 USC §112**

The aforementioned Office Action of February 24, 2006 rejected claims 1 and 25 of the subject application under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. More particularly, the Examiner asserted that the statement “and/or” in these claims is contradictory. In order to overcome this rejection, these claims, along with claim 27, are each amended herein by changing the phrase “audio and/or video program” to “audio-only program, video-only program, or audio and video program.” The applicant, therefore, respectfully requests reconsideration of the rejection of claims 1 and 25, under 35 USC §112, second paragraph.

### **2. Rejection of Claims 1-16, 18-27, 35 and 36 Under 35 USC §103(a)**

The aforementioned Office Action of February 24, 2006 rejected claims 1-16, 18-27, 35 and 36 of the subject application under 35 USC §103(a) as being unpatentable over Tillman et al. (U.S. Patent No. 6,496,980 – hereafter Tillman) in view of Guedalia (U.S. Patent No. 6,745,226). Before the applicant begins formal remarks to these rejections, the applicant would first like to clarify the following two sections of the Office Action:

- a) On page 12 of the Office Action, in the second paragraph the Examiner states

“Chiang discloses a system for ...” but up until this point no reference had been made to Chiang in the Office Action. Furthermore, the corresponding section references cited at the end of this paragraph are the same as the section references cited for Guedalia on page 4 of the Office Action. Therefore, in this particular paragraph the applicant has assumed that “Chiang” is merely a typographical error and the Examiner really meant to say “Guedalia.”

- b) On page 14 of the Office Action, in the second paragraph the Examiner states “Guedalia discloses a method and system for ...” but the corresponding section references cited at the end of this paragraph don’t seem to correlate to Guedalia, but rather appear to be section references that were cited for Chiang in the previous Office Action dated September 21, 2005. Furthermore, in the next (third) paragraph on page 14, the Examiner states “given the teaching of Chiang it would have been obvious to ...” In these two particular paragraphs the applicant has assumed that these discrepancies are also merely typographical errors. Correspondingly, the applicant has assumed in the third paragraph that rather than “Chiang” the Examiner really meant to say “Guedalia,” and the applicant has assumed in the second paragraph that the section reference the Examiner meant to cite was “(col. 7, lines 64-67, col. 8, lines 1-19 and col. 9, lines 5-17).”

In the event that any of the above assumptions are incorrect, please notify the undersigned immediately.

Now returning to the applicant’s remarks to the aforementioned claim rejections, the aforementioned Office Action of February 24, 2006 stated that Tillman teaches all the elements of claims 1-16, 18-27, 35 and 36 with the exception of “having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy, and wherein requesting a base quality version of the program from a server over the

network comprises requesting as many layers in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network” which is purportedly taught by Guedalia. The Examiner further stated that “given the teaching of Guedalia, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tillman by transmitting digital data frames to a user desktop without exceeding the available bandwidth to provide a good video quality data streams to the user's output device over the network thereby enabling the entire image to be seen by a user at least at minimum quality.” The applicant respectfully disagrees with this contention of obviousness for the following reasons.

In claims 1, 25 and 27 the **applicant claims** a computer-implemented process, a client-server based computer network, and computer-executable instructions in which a ***client computer requests a program from a server*** over the network. The program request includes a ***client request for a base quality version of the program***, where the base quality version consists of a layered unicast having hierarchically related layers, and the *client request* includes **requesting as many layers, starting with a base layer, as can be transmitted** from the server to the client **without exceeding the available bandwidth of the network**. In other words, the transmission of the program from the server to the client only takes place when the user on the client specifically makes a request for the program. **No program data is transmitted to the client until a specific user request is made.**

In contrast, **Guedalia teaches** a method, system and devices for transmitting information to a user's desktop computer in which a **content developer or publisher pre-selects what information a user will see, and a server transmits a “low quality” version of this pre-selected information to the user's desktop computer** in the background, **without the user's knowledge or involvement**, and without the user's desktop computer or the user themselves making any request for the information. In other words, the **server sends the low quality version of the information on its own initiative**. Guedalia further teaches that if the user subsequently chooses to view the low quality, pre-selected and pre-transmitted information, they can then request that

the server send them the “full quality” version of the information. Granted, per the Examiner’s references (column 7, lines 64-67, column 8, lines 1-19 and column 9, lines 5-17) Guedalia teaches that the information is progressively encoded on the server into sequential data blocks which are transmitted to the user’s desktop computer in a streaming fashion so that the rate at which the information is delivered to the desktop computer is scaled (by the server) to the available network bandwidth between the server and desktop computer. However, **the amount of data ultimately sent to the desktop computer for the low quality version of the program** (as well as for the subsequent, full-quality version for that matter) **is predetermined by the server, independent of the available network bandwidth**, and independent of any desktop computer request for a prescribed amount of data based on the available network bandwidth.

As stated in the applicant’s November 30, 2005 response to the Office Action dated September 21, 2005, Tillman “teaches that a client computer’s first request for a program results in the server sending only the base layer of data and no more (i.e., Tillman does not teach custom tailoring a client computer’s first request for a program, or any subsequent program requests for that matter, to the network bandwidth available).”

Thus, **the combination of Tillman and Guedalia teaches that the server, on its own initiative, transmits to the client only a base layer (or low quality version) of data associated with a program.** The specific program sent to the client is **pre-selected for the client user without their knowledge or involvement** (i.e., without the user or their client computer making any request for the program). Furthermore, **the amount of program data sent by the server to the client for this base layer (low quality) version of the program is predetermined by the server, independent of the network bandwidth available** between the server and client. This is distinctly different than what is claimed by the applicants.

In order to deem the applicant’s claims unpatentable under 35 USC §103(a), a prima facie case showing obviousness must be made. To make a prima facie case

showing obviousness, *all* of the elements of the recited claims must be considered, especially when they are missing from the prior art. If a claimed element is *not* taught in the prior art and has advantages not appreciated by the prior art, then no prima facie case of obviousness exists. The Federal Circuit court has stated that it was an error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein (*In Re Fine*, 837 F.2d 107, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Based on the arguments presented above, it is the applicant's position that the combination of Tillman and Guedalia does not teach the applicant's claimed process, network and instructions in which a client computer requests a program from a server over the network, where the program request includes a client request for a base quality version of the program, the client request including requesting as many layers, starting with a base layer, as can be transmitted without exceeding the available bandwidth of the network. Accordingly, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of prima facie showing of obviousness means that rejected claims 1-16, 18-27, 35 and 36 are patentable under 35 USC §103(a) over Tillman in view of Guedalia. Accordingly, it is respectfully requested that these claims be reconsidered based on the following non-obvious claim language exemplified in claim 1:

“A computer-implemented process for obtaining progressively higher quality versions of an audio-only program, video-only program, or audio and video program over a client-server based network, comprising a client computer performing the process actions of:


requesting a base quality version of the program from a server over the network, wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy, and wherein requesting a base quality version of the program from a server over the network comprises requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network;”

### 3. Summary

In view of the arguments set forth above, the applicants respectfully submit that claims 1-16, 18-27, 35 and 36 of the subject application are in condition for allowance as they particularly point out and distinctly claim the subject matter which the applicant regards as his invention, and are also not obvious over the prior art cited by the Examiner. Accordingly, reconsideration of the rejection of these claims is respectfully requested and allowance of these claims at an early date is courteously solicited.

Respectfully submitted,

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